FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA, Plaintiff, vs. ANSON JOHN SUZUKI, JESSY (JC) MEFY, and WILSON (W-TWO) WILIANDER, Defendants.	)	CRIMINAL CASE NO. 2009-1503

ORDER DENYING RECONSIDERATION

Ready E. Johnny
Associate Justice

Decided: April 29, 2010

APPEARANCE:

For the Defendant: (Wiliander)
Harry A. Seymour, Esq.
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HEADNOTES

Criminal Law and Procedure – Motions

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Suzuki, 17 FSM Intrm. 114, 115 (Chk. 2010).

Evidence – Burden of Proof; Evidence – Hearsay

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM Intrm. 114, 116 (Chk. 2010).

Evidence – Judicial Notice

Defense counsel's representations of what the testimony was in and what facts a state court proceeding found involving a defendant's statements, was inadequate for the FSM Supreme Court to take judicial notice of those adjudicative facts when the court has not been supplied with the necessary information for it to take judicial notice. FSM v. Suzuki, 17 FSM Intrm. 114, 116 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody

FSM law requires that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM

v. Suzuki, 17 FSM Intrm. 114, 116 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody

It would not have been reasonable for a police officer to have made an effort to advise a vehicle's occupants as to the cause and authority of the arrest before or during the arrests when the officer had every reason to believe that the two rifles in the vehicle were loaded and that one or more of the vehicle's occupants might be disposed to use those weapons. FSM v. Suzuki, 17 FSM Intrm. 114, 116 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody

The statute does not, nor will the court, require an arresting officer, at or before the time of a person's arrest, to advise that person of the cause and authority for the arrest when to do so would endanger or imperil the arresting officer's life or safety or that of the general public. This is because the evident purpose of giving notice of the authority and cause for the arrest is to establish a procedure likely to result in a peaceable arrest. The failure to inform someone about to be arrested without a warrant of the authority and cause for the arrest does not invalidate that arrest. FSM v. Suzuki, 17 FSM Intrm. 114, 116 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody

There is no set ritual or formula that must be followed to comply with the requirement that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The notice is sufficient when it is such as to inform a reasonable man of the authority and purpose of the one making the arrest, and the reason thereof. Circumstances, without express words, may afford sufficient notice. FSM v. Suzuki, 17 FSM Intrm. 114, 117 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody; Criminal Law and Procedure – Interrogation and Confession

Arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. FSM v. Suzuki, 17 FSM Intrm. 114, 118 (Chk. 2010).

Criminal Law and Procedure – Arrest and Custody

As a matter of good police practice, if a person is in the act of committing an offense or if it is too dangerous to make a reasonable effort to inform a person of the cause and authority of that person's arrest before or at the time of the arrest, the police should do so as soon as the person is safely in police custody. This should usually be before the arrestee is transported to a place of detention. FSM v. Suzuki, 17 FSM Intrm. 114, 118 (Chk. 2010).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On March 24, 2010, defendant Wilson (W-Two) Wiliander filed his Motion to Reconsider Order Denying Willander's Suppression Motion. The government did not file a response. Failure to oppose a motion is generally deemed a consent to the motion, FSM Crim. R. 45(d), but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004); FSM v. Sipos, 12 FSM Intrm. 385, 386 (Chk. 2004); FSM v. Wainit, 12 FSM Intrm. 376, 379 (Chk. 2004).

I.

Wiliander contends that his motion to suppress the written and oral statements he made to the police should be reconsidered and granted on the ground that when he was arrested at about 10:00 a.m. on March 26, 2009, he was not informed of the cause and authority of his arrest. He also contends that those statements should be suppressed because, in his view, the preponderance of the evidence showed that those statements had been coerced. He asserts that he was slapped by an officer and had his hair forcibly cut before he gave his statements and that as a result of that illegal police activity he gave those statements.

II.

The court must reject the notion that the preponderance of the evidence proved that Wiliander's statements were coerced because the only "evidence" in support thereof was counsel's representations and hearsay and hearsay within hearsay testimony. Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. And, as the court previously ruled, defense counsel's representations of what testimony was given and what facts were found in a state court proceeding involving Wiliander's statements, was inadequate for this court to take judicial notice of those adjudicative facts when this court has not been supplied with the necessary information for it to take judicial notice. FSM v. Suzuki, 17 FSM Intrm. 70, 74 (Chk. 2010).

III.

FSM law requires that "[a]ny person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest." 12 F.S.M.C. 214(1). The arresting officer testified that he did not inform the defendants as to the cause and authority for their arrest when he arrested them. Wiliander presumably contends that the arrest was thus illegal and that any statement made any time after the arrest must be illegally obtained and therefore suppressed.

When Wiliander was arrested he was an occupant of a vehicle. The arresting officer had been looking for a vehicle whose occupants were reported to have been involved in an attempted armed robbery earlier that morning during which a firearm had been discharged. He spotted a vehicle fitting the description and which had no license plate. When the officer approached and asked the driver for the vehicle's registration he noticed two rifles in the vehicle. He then arrested the vehicle's three occupants, including Wiliander.

Under the circumstances of the arrest, it would not have been reasonable for the police officer to have made an effort to advise the vehicle's occupants "as to the cause and authority of the arrest" before or during the arrests. He had every reason to believe that the two rifles were loaded and that one or more of the vehicle's occupants might be disposed to use those weapons. The statute does not, nor will the court, require an arresting officer, at or before the time of a person's arrest, to advise that person of the cause and authority for the arrest when to do so would endanger or imperil the arresting officer's life or safety or that of the general public. This is because the evident purpose of giving notice of the authority and cause for the arrest is to establish a procedure likely to result in a peaceable arrest. Klinger v. Untied States, 409 F.2d 299, 306 (8th Cir. 1969); State v. Thunder Horse, 177 N.W.2d 19, 22 (S.D. 1970) (both discussing South Dakota statute similar to FSM statute). The failure to inform someone about to be arrested without a warrant of the authority and cause for the arrest does not invalidate that arrest. Thunder Horse, 177 N.W.2d at 22.

Furthermore, there is no set ritual or formula that mus followed to comply with 12 F.S.M.C. 214(1). In Loch v. FSM, 1 FSM Intrm. 566, 569 (App. 1984 appellate court concluded that when a municipal police officer had informed an accused that he w ing to "take him to a place" because he was drinking and when there were indications that the used understood that the officer was seeking to effect an arrest, it constituted compliance wit F.S.M.C. 214(1)'s requirement that arresting officers "make every reasonable effort to advise person arrested as to the cause and authority of the arrest." Loch, 1 FSM Intrm. at 569. "[T]h ice is sufficient when it is such as to inform a reasonable man of the authority and purpose of e making the arrest, and the reason thereof. Circumstances, without express words, may afford ent notice." In re Kiser, 158 N.W.2d 596, 602 (S.D. 1968) (similar South Dakota statute "is sat if what is said and done makes clear why the arrest is being made"); *see also* State v. Fairb 289 N.E.2d 352, 357 (Ohio 1972) (discussing similar Ohio statute).

In the present case, the vehicle's occupants would h en informed of the authority for the arrests if the arresting officer was in uniform or had identified f as a police officer[1] when he asked for the vehicle's registration and if they were under the impre that the officer was seeking to effect an arrest. The contemporaneous seizure of the two rifles in view constituted circumstances that should have afforded sufficient notice that the cause of th sts was firearms charges.

The court is aware that a civil suit ruling held that an was "illegal" because the police had not complied with 12 F.S.M.C. 214(1) and did not inform t estee of the cause of his arrest until he was taken to the police station, Warren v. Pohnpei State D f Public Safety, 13 FSM Intrm. 483, 495 (Pon. 2005), but a more rigorous and precise analysis he facts in that case should conclude that the arrest was legal as long as there was probable caus an arrest[2] but that once the arrestee was safely in custody his continued detention may have b unlawful until he was informed of the cause of his arrest. Since the Warren court never conside or applied the principles announced by the Loch appellate court when it made its ruling (and there g other firmer grounds to support its result), it cannot offer proper guidance in this case. Other ci ases, under similar circumstances, did apply the Loch analysis and did decline to impose civil liab on 12 F.S.M.C. 214(1) grounds. *See* Annes v. Primo, 14 FSM Intrm. 196, 203 (Pon. 2006); Cc v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997). But in Hauk v. Emilio, 15 FSM Intrm. 476, (Chk. 2008), a plaintiff was awarded damages when he was assaulted, beaten, physically injured, arrested by unknown police officers, and then held for six hours before being released, all without told the cause of his arrest. (Nor did the civil trial reveal the "cause" of the arrest.) Loch was n pplicable to Hauk.

The court is also aware that in FSM v. George, 6 Intrm. 626, 628-29 (Kos. 1994), an arrestee's statements were suppressed because the ar g officer "just did not make every reasonable effort to advise Mr. George of the cause and au of the arrest as commanded by the statute" and because the arrestee was not informed of all c rights under 12 F.S.M.C. 218 before giving a statement which was a product of his lack of res g his twelve hours detention before questioning. The George court also never considered or app e Loch appellate ruling, and if it had it may have found sufficient compliance with 12 F.S.M.C. 21 although the result would have been the same since the suppression of George's statement wc still have based soundly on the other grounds of involuntariness of those statements due to e's lack of rest and on the police

[1] Or even if the defendants personally knew that the arr officer was a police officer. Heinzman v. State, 283 P. 264, 265 (Okla. Crim. App. 1929) (discussin ute similar to the FSM's). There is no evidence in this regard.

[2] Never determined by the Warren court.

detective's failure to inform him of his rights and obtain a valid waiver of those rights before questioning him. The George court's failure to consider the Loch appellate ruling (and there being other firmer grounds to support its conclusion) means that the George decision cannot offer proper guidance in this case.

Lastly, arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. State v. Davie, 686 N.E.2d 245, 257 (Ohio 1997); Fairbanks, 289 N.E.2d at 357-58; *cf.* City of Miami v. Nelson, 186 So.2d 535, 536 n.1 (Fla. Dist. Ct. App. 1966) ("fact that the person to be arrested is not informed of the cause of the arrest until subsequent thereto, does not necessarily deprive him of his rights") (discussing similar Florida statute). Wiliander does not assert that he was not informed of the cause of his arrest before he made the statements. The record is silent on at what point before he made his statements Wiliander was informed of the cause of his arrest.

As a matter of good police practice, if a person is in the act of committing an offense or if it is too dangerous to make a reasonable effort to inform a person of the cause and authority of that person's arrest before or at the time of the arrest, the police should do so as soon as the person is safely in police custody. This should usually be before the arrestee is transported to a place of detention.

IV.

There being no good grounds to grant Wiliander's unopposed motion to reconsider, it is accordingly denied.

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